



1 **I. Discussion**

2 District courts have the inherent power to control their dockets and “[i]n the exercise of  
3 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>6</sup> A  
4 court may dismiss an action based on a party’s failure to obey a court order or comply with local  
5 rules.<sup>7</sup> In determining whether to dismiss an action on one of these grounds, I must consider:  
6 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its  
7 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
8 cases on their merits; and (5) the availability of less drastic alternatives.<sup>8</sup>

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the  
10 court’s interest in managing its docket, weigh in favor of dismissal of Gabelman’s claims. The  
11 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
12 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
13 ordered by the court or prosecuting an action.<sup>9</sup> The fourth factor—the public policy favoring  
14 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires me to consider whether less drastic alternatives can be used to  
16 correct the party’s failure that brought about the court’s need to consider dismissal.<sup>10</sup> Courts

---

17  
18 <sup>6</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

19 <sup>7</sup> See *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to  
20 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*  
*U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court  
order).

21 <sup>8</sup> See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006)  
(quoting *Malone*, 833 F.2d at 130).

22 <sup>9</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 <sup>10</sup> See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering  
less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);  
*accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002).

1 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
2 explore possible and meaningful alternatives.”<sup>11</sup> Because this action cannot realistically proceed  
3 until and unless Gabelman files an amended complaint, the only alternative is to enter a third  
4 order setting another deadline. But the reality of repeating ignored orders is that it often only  
5 delays the inevitable and squanders the court’s finite resources. The circumstances here do not  
6 indicate that this case will be an exception because there is no evidence that Gabelman needs  
7 additional time, or that he did not receive the court’s orders. Setting a third deadline is not a  
8 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

## 9 **II. Conclusion**

10 Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
11 dismissal. I THEREFORE ORDER that this action is **dismissed without prejudice** based on  
12 Gabelman’s failure to file an amended complaint in compliance with the court’s December 4,  
13 2022, and January 20, 2023, orders. The Clerk of Court is directed to **enter judgment**  
14 **accordingly and close this case**. No other documents may be filed in this now-closed case. If  
15 Gabelman wishes to pursue his claims, he must file a complaint in a new case and either properly  
16 apply to proceed *in forma pauperis* or pay the \$402 filing fee.

17 Dated: March 27, 2023

18   
19 U.S. District Judge

20  
21  
22  
23  

---

<sup>11</sup> *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).